

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of US West Communications, Inc.)
for Forbearance from Regulation)
as a Dominant Carrier in the)
Seattle, Washington MSA)

CC Dkt. No. 99-1

Petition of Bell Atlantic Telephone Companies)
for Forbearance from Regulation)
as Dominant Carriers in Delaware;)
Maryland; Massachusetts; New Hampshire;)
New Jersey; New York; Pennsylvania;)
Rhode Island; Washington, D.C.; Vermont; and)
Virginia)

CC Dkt. No. 99-24

**COMMENTS OF
NETWORK ACCESS SOLUTIONS, INC.¹**

While petitioners request rate deregulation for all of their interstate special access services in designated geographic areas, the FCC should not deregulate the special access services they provide by using xDSL technology. That technology permits an incumbent LEC to provide high bandwidth special access service using the LEC's existing copper loop plant. The LEC uses xDSL technology to provide service by attaching an xDSL modem to each end of the end user's loop and transporting traffic beyond the end user's serving wire center either by packet switched network or dedicated transport. Petitioners use xDSL technology to provide special access services for

¹ Network Access Solutions, Inc. ("NAS") uses xDSL technology to provide special access service in several mid-Atlantic states. The NAS offering, CuNet, provides an end user with a dedicated high speed connection to the Internet or to a corporate LAN.

various applications. For example, they use the technology to provide an end user with a direct connection to the POP of the user's preferred ISP.² They also sometimes use the technology to provide an end user with a direct connection to the POP of the user's preferred IXC.³

The doctrine of stare decisis bars the FCC from reducing regulation of any special access offering that petitioners provide via xDSL technology. That doctrine prohibits an administrative agency from reversing an earlier order absent new facts justifying reversal. The Commission has made clear that the market for special access service utilizing xDSL technology is separate from the market for similar service using other technologies since services utilizing xDSL technology are "advanced" within the meaning of Section 706 of the 1996 Act.⁴ Employing this dichotomy, the FCC declined fewer than seven months ago to reduce regulation of special access services provided by an incumbent LEC via xDSL technology after finding a lack of substantial competition in the xDSL special access market. While petitioners offer evidence in their petitions designed to show that the market for special access service using other technologies is competitive, they do not purport to offer new evidence that the xDSL special access service market is competitive.

Moreover, SBC recently admitted that the xDSL special access market is not competitive. Like petitioners in these cases, SBC petitioned the Commission late last year to

² See, e.g., Bell Atlantic Tel. Cos., FCC 98-317, rel. Nov. 30, 1998.

³ See, e.g., "PairGain Ships One Millionth DSL Unit," http://www.pairgain.com/about/news_reviews/recentnews_9.html (news release announcing use of PairGain's DSL system by incumbent LECs to provide T1 service over one million loops).

⁴ See, e.g., Deployment of Wireline Services Offering Advanced Telecommun. Capability, Notice of Prop. Rulemaking 13 Comm. Reg. (P&F) 1, 22-23, 30 (1998) (proposing to let incumbent LEC affiliates provide special access service utilizing xDSL technology, but not other technologies, free of price and tariff regulation).

CONCLUSION

The Commission should make clear in ruling on these two petitions that interstate special access services provided by incumbent LECs using xDSL technology will remain subject to all existing regulatory controls.

Respectfully submitted

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February 18, 1999

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments of Network Access Solutions, Inc." has been delivered to each of the following:

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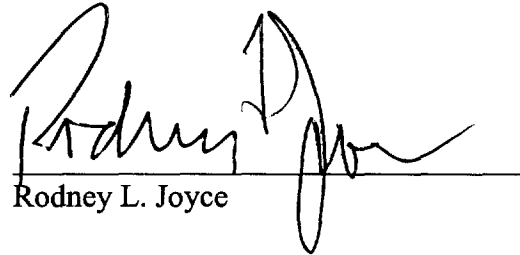
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